

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JANE DOE,

Plaintiff

vs.

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA and  
ELIZABETH BIRNSTIHL, in her  
Individual and official capacity;

Defendants.

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL OF CIVIL  
ACTION AND REQUEST FOR  
PLACE OF TRIAL**

Pursuant to 28 U.S.C. § 1441(b), defendant Elizabeth Birnstihl ("Birnstihl"), by and through her undersigned attorneys, hereby removes this case to the United States District Court for the District of Nebraska, and in support thereof states and alleges as follows:

**TIMELINESS OF REMOVAL**

1. Birnstihl has been named as Defendant in a civil action originally filed on December 5, 2008, in the District Court of Lancaster County, Nebraska, Docket CI 08-5276, entitled Jane Doe v. Board of Regents of the University of Nebraska.

2. Plaintiff Jane Doe served Elizabeth Birnstihl with a Summons and an Amended Complaint on August 1, 2009. This removal is timely under 28 U.S.C. § 1446(b).

3. True and complete copies of all process and pleadings received by Defendant Birnstihl are attached as Exhibit "A".

#### **BASIS FOR JURISDICTION**

4. This Court has original jurisdiction over this action under the provisions of 28 U.S.C. §1331 in that this action against Birnstihl arises under the Constitution of the United States and 42 U.S.C. §1983. See Plaintiff's Complaint, ¶14. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) over all other claims asserted by Plaintiff.

5. Written notice of the filing of this Notice of Removal ("Notice") will be given to Plaintiff promptly after the filing of this Notice, as is required by law.

6. A true and correct copy of this Notice will be filed with the Clerk of the District Court of Lancaster County, Nebraska, as is required by law.

7. Defendant Birnstihl consents to removal of this case to the United States District Court for the District of Nebraska.

8. By filing this Notice, Defendant Birnstihl does not waive any defense and/or affirmative claims, counterclaims, or third party claims that may be available to Defendant.

WHEREFORE, Defendant Birnstihl hereby removes the above-captioned case from the District Court of Lancaster County, Nebraska, to the United States District Court for the District of Nebraska.

ELIZABETH BIRNSTIHL, Defendant

By: s/David R. Buntain  
David R. Buntain #10506  
CLINE, WILLIAMS, WRIGHT,  
JOHNSON & OLDFATHER, L.L.P.  
Attorneys at Law  
1900 U.S. Bank Building  
233 South 13<sup>th</sup> Street  
Lincoln, NE 68508-2095  
(402) 474-6900  
Attorney for Defendant

and

John C. Wiltse, NSBA #16689  
Senior Associate General Counsel  
University of Nebraska  
Varner Hall, Room 237  
3835 Holdrege Street  
Lincoln, Nebraska 68583-0745  
(402) 472-1201 (voice)  
(402) 472-2038 (facsimile)  
[jwiltse@nebraska.edu](mailto:jwiltse@nebraska.edu)

### **REQUEST FOR PLACE OF TRIAL**

Pursuant to NELR 40.1(a)(1)(A) Defendant Birnstihl requests that trial of this action take place in Lincoln, Nebraska.

s/David R. Buntain

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2009, I served a copy of this Notice on the plaintiff, by mailing a copy by U.S. mail to her attorney of record, Kathleen Neary, 411 South 13th Street, Suite 300, Lincoln, Nebraska 68508.

s/David R. Buntain

**VINCENT M. POWERS & ASSOCIATES**

Vincent M. Powers  
Elizabeth A. Govaerts  
Kathleen M. Neary

ATTORNEYS AT LAW

411 So. 13th Street, Suite 300  
Lincoln, NE 68508  
(402) 474-8000  
FAX (402) 474-5006

July 31, 2009

Mr. David Buntain  
Cline Williams  
1900 US Bank Building  
233 S. 13th Street  
Lincoln, NE 68508

RE: *Jane Doe*

Dear David:

Enclosed please find a copy of the First Amended Complaint; Jury Demand and Praeipce that I filed. I have included in the enclosed a praecipce. I intend to serve Elizabeth Birstihl via certified mail. Of course, I would not serve her if the defendant is willing to enter an appearance on her behalf, both in her individual and official capacities.

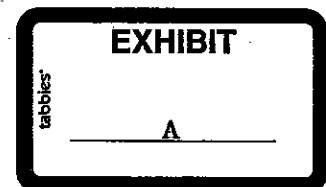
Please let me know your thoughts regarding this matter. I intend to serve this document the first week of August, 2009.

Sincerely,

  
Kathleen M. Neary  
Attorney at Law

Encl. 

KMN/sr



IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JANE DOE,	)	CASE NO.
	)	
Plaintiff,	)	FIRST AMENDED
	)	COMPLAINT
	)	
vs.	)	JURY DEMAND
	)	
	)	and
THE BOARD OF REGENTS OF THE	)	
UNIVERSITY OF NEBRASKA and	)	PRAECIPE
ELIZABETH BIRNSTIHL, in her	)	
Individual and official capacity;	)	
	)	
Defendant.	)	

COPY

COMES NOW the Plaintiff, by and through her attorneys of record, and for her first amended complaint states and alleges as follows:

1. This is an action seeking redress for the violation of the rights guaranteed to the plaintiff by the Nebraska Fair Employment Practices Act and 42 U.S.C Section 2000(e) et.seq. of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII), the Constitutions of the United States of America and of the State of Nebraska and amendments thereto for violations of religious discrimination arising out of her former employment with the Defendant as well as violations of Plaintiff's right to exercise free speech and expression as well as her exercise of religion.

2. Jurisdiction of this Court is invoked pursuant to the state and federal statutes referenced herein.

3. Plaintiff filed a complaint with the Nebraska Equal Opportunity Commission and the United States Equal Opportunity Commission with respect to the allegations set forth herein as well as other allegations. The NEOC found reasonable cause to believe the Defendant discriminated against the Plaintiff in her terms and conditions of employment. The plaintiff has filed this timely action during the pendency of the NEOC and the EEOC action.

4. At all times relevant, the plaintiff was a resident of the Lincoln, Lancaster County, Nebraska.

5. Plaintiff has been granted leave of the Court to file the instant action under the pseudonym of Jane Doe.

6. At all times relevant, the Defendant Board of Regents of the University of Nebraska was and is a land granted institution of higher education operating within the State of Nebraska. The Board of Regents and their campus located in Lincoln, Nebraska, to-wit: the University of Nebraska – Lincoln, is an employer within the meaning of the Nebraska Fair Employment Practices Act and Title VII as it is engaged in an industry affecting commerce and employed fifteen or more employees for twenty or more weeks during the times alleged herein. At all times relevant, Elizabeth Birnstihl was an Associate Dean and State 4-H Administrator of the Defendant and was working in her individual and official capacities at all times alleged herein. The Defendants are properly named for purposes of the Constitutional violations alleged herein.

7. All illegal acts alleged herein occurred in the State of Nebraska.

8. Plaintiff is a witch and the Reclaiming Tradition of Witchcraft is her religion. Also, at all times alleged herein, Plaintiff was engaged her free exercise of religion and exercise

of free speech and expression as protected by the Constitutions of the United States of America and the State of Nebraska.

9. In February, 2007, Plaintiff was hired by the Defendant as a director for a youth program operated by the Defendant in the State of Nebraska. When the Defendant learned of Plaintiff's religion and/or exercise of free speech and/or expression and/or her exercise of religious activities, Plaintiff was terminated from her position by Assistant Dean Birnstahl and was replaced by a non-witch. At all times alleged herein, Plaintiff's work performance was satisfactory.

10. As a result of the Defendant's actions, Plaintiff has endured compensatory damages as well as lost wages and the value of benefits and will continue to incur these damages into the future.

11. Due to the willful nature of the Defendant's conduct, punitive damages are appropriate pursuant to the violations arising under the Constitution of the United States of America as made applicable to the State of Nebraska pursuant to the 14<sup>th</sup> Amendment to said constitution.

#### COUNT I

Plaintiff incorporates paragraphs 1 through 11 as if fully set forth herein.

12. Due to her religion, Plaintiff was subjected to different and adverse terms, conditions and privileges of employment than Defendant's non-witch employees. The aforementioned unlawful termination violates the Nebraska Fair Employment Practices Act and Title VII of the Civil Rights Act, as amended.

13. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered actual compensatory damages, lost wages, loss of future income and loss of fringe benefits, the total sum of which will be specifically pleaded when ascertained.

## COUNT II

Plaintiff incorporates paragraphs 1 through 13 as if fully set forth herein.

14. Due to her exercise of free speech or expression and/or the exercise of her religion, Plaintiff was wrongfully terminated by the Defendant Elizabeth Birnstihl. The aforementioned unlawful termination violates the Constitutions of the United States of America and the State of Nebraska as well as amendments thereto.

13. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered actual compensatory damages, lost wages, loss of future income and loss of fringe benefits, the total sum of which will be specifically pleaded when ascertained. Due to the willful nature of the violation, punitive damages are also appropriate under federal law.

**WHEREFORE**, Plaintiff respectfully requests that this Court assume jurisdiction herein as to all counts alleged herein and grant the following relief:

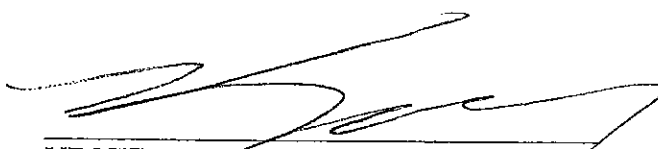
- a. Declare the conduct of the Defendants to be violative of the rights of the Plaintiff under the appropriate state or federal law or laws;
- b. Award the Plaintiff monetary damages for lost wages and the value of benefits incurred through the date of trial plus accrued interest;
- c. Direct the Defendant to reinstate the Plaintiff to the position previously held by her or, in the alternative, award the Plaintiff front pay plus the reasonable value of job related benefits;



- d. Award the Plaintiff compensatory damages for pain, suffering, inconvenience, humiliation and/or emotional distress in an amount to be determined by the jury or the court;
- e. Award the Plaintiff punitive damages under federal law for the violations alleged herein;
- f. Enjoin the Defendant from any further discrimination against the Plaintiff;
- g. Award the Plaintiff costs and reasonable attorney's fees and such other and further relief as the Court deems just and reasonable and appropriate to correct the wrong done to the Plaintiff.

FOR: JANE DOE, Plaintiff

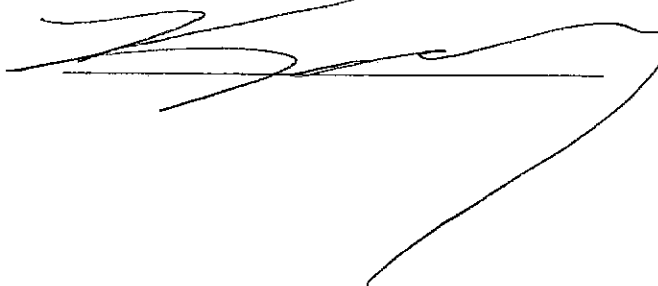
BY:



VINCENT M. POWERS & ASSOCIATES  
Kathleen M. Neary 20212  
411 South 13<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508  
(402) 474-8000

DEMAND FOR JURY TRIAL

Plaintiff request a jury trial in Lincoln, Nebraska.



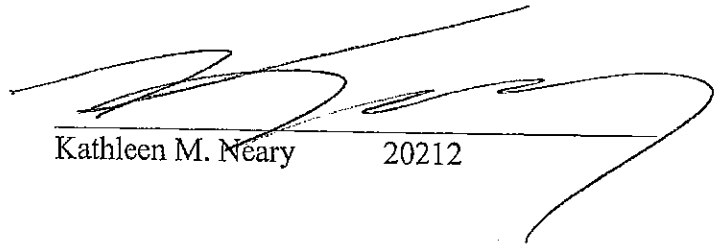
PRAECIPE

TO THE CLERK OF SAID COURT:

Please issue summons for service , via certified mail, upon Defendant Elizabeth Birnstihl in her official and individual capacities at the following addresses:

Elizabeth Birnstihl  
211 Agricultural Hall  
P.O. Box 830703  
Lincoln, NE 68583-0703

Please advise the undersigned when said summons has been issued.



Kathleen M. Neary 20212

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JANE DOE,	)	CASE NO. 08-5276
	)	
Plaintiff,	)	SECOND AMENDED
	)	COMPLAINT
	)	and
vs.	)	JURY DEMAND
	)	and
	)	CERTIFICATE OF SERVICE
THE BOARD OF REGENTS OF THE	)	
UNIVERSITY OF NEBRASKA and	)	
ELIZABETH BIRNSTIHL, in her	)	
Individual and official capacity;	)	
	)	
Defendant.	)	

COPY

COMES NOW the Plaintiff, by and through her attorneys of record, and for her second amended complaint states and alleges as follows:

1. This is an action seeking redress for the violation of the rights guaranteed to the plaintiff by the Nebraska Fair Employment Practices Act and 42 U.S.C Section 2000(e) et.seq. of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII), 42 U.S.C. Section 1983, the Constitutions of the United States of America and of the State of Nebraska and amendments thereto for violations of religious discrimination arising out of her former employment with the Defendant as well as violations of Plaintiff's right to exercise free speech and expression as well as her exercise of religion.

2. Jurisdiction of this Court is invoked pursuant to the state and federal statutes referenced herein.

3. Plaintiff filed a complaint with the Nebraska Equal Opportunity Commission and the United States Equal Opportunity Commission with respect to the allegations set forth herein as well as other allegations. The NEOC found reasonable cause to believe the Defendant

discriminated against the Plaintiff in her terms and conditions of employment. The plaintiff has filed this timely action during the pendency of the NEOC and the EEOC action.

4. At all times relevant, the plaintiff was a resident of the Lincoln, Lancaster County, Nebraska.

5. Plaintiff has been granted leave of the Court to file the instant action under the pseudonym of Jane Doe.

6. At all times relevant, the Defendant Board of Regents of the University of Nebraska was and is a land granted institution of higher education operating within the State of Nebraska. The Board of Regents and their campus located in Lincoln, Nebraska, to-wit: the University of Nebraska – Lincoln, is an employer within the meaning of the Nebraska Fair Employment Practices Act and Title VII as it is engaged in an industry affecting commerce and employed fifteen or more employees for twenty or more weeks during the times alleged herein. At all times relevant, Elizabeth Birnstihl was an Associate Dean and State 4-H Administrator of the Defendant and was working in her individual and official capacities at all times alleged herein. The Defendants are properly named for purposes of 42 U.S.C. Section 1983, as well as the Constitutional violations alleged herein.

7. All illegal acts alleged herein occurred in the State of Nebraska.

8. Plaintiff is a witch and the Reclaiming Tradition of Witchcraft is her religion. Also, at all times alleged herein, Plaintiff was engaged her free exercise of religion and exercise of free speech and expression as protected by the Constitutions of the United States of America and the State of Nebraska.

9. In February, 2007, Plaintiff was hired by the Defendant as a director for a youth program operated by the Defendant in the State of Nebraska. At all times alleged herein,

Plaintiff's work performance was satisfactory. When the Defendant learned of Plaintiff's religion and/or exercise of free speech and/or expression and/or her exercise of religious activities, Plaintiff was terminated from her position by Assistant Dean Birnstahl and was replaced by a non-witch. Defendant Birnstahl was acting in the scope and course of her employment with the Defendant when she terminated the Plaintiff. Defendant Birnstahl knew or should have known that the termination of the Plaintiff violated the state and federal laws set forth herein.

10. As a result of the Defendant's actions, Plaintiff has endured compensatory damages as well as lost wages and the value of benefits and will continue to incur these damages into the future.

11. Due to the willful nature of the Defendant's conduct, punitive damages are appropriate pursuant to the violations arising under 42 U.S.C. Section 1983, the Constitution of the United States of America as made applicable to the State of Nebraska pursuant to the 14<sup>th</sup> Amendment to said constitution.

#### COUNT I

Plaintiff incorporates paragraphs 1 through 11 as if fully set forth herein.

12. Due to her religion, Plaintiff was subjected to different and adverse terms, conditions and privileges of employment than Defendant's non-witch employees. The aforementioned unlawful termination violates the Nebraska Fair Employment Practices Act and Title VII of the Civil Rights Act, as amended.

13. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered actual compensatory damages, lost wages, loss of future income and loss of fringe benefits, the total sum of which will be specifically pleaded when ascertained.

COUNT II

Plaintiff incorporates paragraphs 1 through 13 as if fully set forth herein.

14. Due to her exercise of free speech or expression and/or the exercise of her religion, Plaintiff was wrongfully terminated by the Defendant Elizabeth Birnstihl. The aforementioned unlawful termination violates 42 U.S.C. Section 1983, the Constitutions of the United States of America and the State of Nebraska as well as amendments thereto.

15. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered compensatory damages, lost wages and benefits, loss of future income and the value of job related benefits, the total sum of which will be specifically pleaded when ascertained. Due to the willful nature of the violation, punitive damages are also appropriate under federal law.

**WHEREFORE**, Plaintiff respectfully requests that this Court assume jurisdiction herein as to all counts alleged herein and grant the following relief:

- a. Declare the conduct of the Defendants to be violative of the rights of the Plaintiff under the appropriate state or federal law or laws;
- b. Award the Plaintiff monetary damages for lost wages and the value of benefits incurred through the date of trial plus accrued interest;
- c. Direct the Defendant to reinstate the Plaintiff to the position previously held by her or, in the alternative, award the Plaintiff front pay plus the reasonable value of job related benefits;
- d. Award the Plaintiff compensatory damages for pain, suffering, inconvenience, humiliation and/or emotional distress in an amount to be determined by the jury or the court;

- e. Award the Plaintiff punitive damages under federal law for the violations alleged herein;
- f. Enjoin the Defendant from any further discrimination against the Plaintiff;
- g. Award the Plaintiff costs and reasonable attorney's fees and such other and further relief as the Court deems just and reasonable and appropriate to correct the wrong done to the Plaintiff.

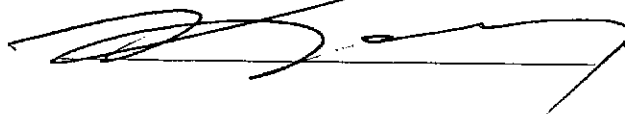
FOR: JANE DOE, Plaintiff

BY: 

VINCENT M. POWERS & ASSOCIATES  
Kathleen M. Neary 20212  
411 South 13<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508  
(402) 474-8000

#### DEMAND FOR JURY TRIAL

Plaintiff request a jury trial in Lincoln, Nebraska



#### CERTIFICATE OF SERVICE

The undersigned certifies that on this 7<sup>th</sup> day of August, 2009, a true and accurate copy of the above and foregoing was sent to Defendant's attorney of record, David Buntain, Cline Williams Law Firm, 1900 US Bank Building, 233 South 13<sup>th</sup> Street, Lincoln, NE 68508.

